application was based on the principles stated in *Erinford Properties Ltd* v *Cheshire County Council*.[11] I refused the application.

At the same time I heard applications under two other originating summonses, one by the third defendant (OS No 684 of 1990) and the other by the fourth defendant (OS No 661 of 1990) seeking the removal of caveats lodged by the plaintiff against the property. I ordered the caveats to be lifted. I felt compelled to do so in view of the conclusions I had reached in these proceedings and my refusal to grant the plaintiff a stay.

To summarize my orders, they are:

(1) The declarations sought by the plaintiff in the amended originating summons are dismissed.
(2) No orders are made on the consequent reliefs sought.
(3) The interim injunction order made on 22 May 1990 as varied by the order of court dated 28 May 1990 is set aside.
(4) The plaintiff's motion to continue the interim injunction order made on 22 May 1990 as varied by the order of court dated 28 May 1990 is dismissed.
(5) The plaintiff's application for a stay, that is for the injunction to continue until the filing of a notice of appeal, is refused.
(6) On the attorney's application by summons-in-chambers, the interim injunction order made on 22 May 1990 as varied by the order of court dated 28 May 1990 is also set aside on the grounds of material non-disclosure and want of notice.
(7) An inquiry into damages to be assessed by the registrar.
(8) Costs of the amended originating summons, the plaintiff's motion to continue the injunction and the attorneys' summons to discharge the injunction to be taxed and paid by the plaintiff to the defendants on the basis that the first and second defendants (the attorneys) shall be entitled to only one set of costs.

Order accordingly.

Solicitors: *Ramdas & Wong*; *Drew & Napier*; *Allen & Gledhill*; *Khattar Wong & Partners*.

Reported by *S Surenthiraraj*

Wong Meng Yuen Eddie & Anor v Soh Chee Kong & Ors

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 386 OF 1990
KARTHIGESU JC
20 JULY 1990

Land Law — Agreement for sale and purchase of property — Right of purchaser to rescind agreement if government requisitions unsatisfactory — Road widening proposal — Whether requisition unsatisfactory

The plaintiffs were the owners and vendors of a piece of land ('the property'). The defendants are Buddhist monks who agreed to purchase the property from the plaintiffs under an agreement in writing. They paid a deposit of 10% of the purchase price. The property was residential property and was zoned as such. The sale was subject to the Singapore Law Society Conditions of Sale 1981. Clause 9 of their agreement provided that the sale was to be subject to the purchasers' solicitors receiving satisfactory replies to their requisitions to government departments. It was further stated in cl 9 (ii) that any such replies indicating that the said property would be affected by road proposal arising from a redevelopment of the said property shall not be deemed unsatisfactory. After the purchasers had sent out their requisitions, they informed the sellers that the property was affected by a road widening proposal, and they were therefore entitled to rescind the agreement. The road proposal that affected the property would only be implemented either on the development of the property or on a road construction being carried out whichever is earlier. The sellers disputed the rescission and claimed that the defendants had purchased the property for the purpose of building either a temple or for converting the existing building on the property into a temple. The sellers therefore started the present proceedings and claimed, inter alia, the forfeit of the defendants' deposit. The defendants denied that they had that intention.

Held, dismissing the plaintiffs' claim:

(1) The court was not satisfied that on the balance of probabilities the sellers have established that the purpose of the purchase was to rebuild on the site a temple or to convert the existing building into a temple.

(2) Since it was the sellers who were seeking to rely on cl 9(ii), the burden of proof was on them. Since they were not able to discharge this burden, they could not rely on cl 9(ii) to argue that the requisition was in fact satisfactory.

(3) The test to be applied is an objective one as to whether the property is adversely affected by a road proposal. The fact that there is no current programme does not make the proposal any less a proposal. The existing state of affairs is that there is a proposal and whenever implemented, the area affected would constitute about 23% of the total area of the property.

(4) The existence of such road proposals were within the contemplation of the vendors and the purchasers in this case and they sought to specifically provide for it by including cl 9 in their contract. The court's duty is to interpret it and to give effect to the intention of parties.

Cases referred to

1 *Tatlien Hardware Pte Ltd* v *Tan & Lie & Anor* [1982] 1 MLJ 9 (folld)

2 *Tay Theng Khoon & Anor* v *Lee Kim Tah (Pte) Ltd* [1990] 1 MLJ 145 (folld)
3 *Chu Yik Man* v *S Rajagopal & Co & Anor* [1987] 2 MLJ 557 (folld)
4 *Ng Khong Lim* v *Nancy Teo* [1985] 2 MLJ 417 (distd)
5 *Lim Kim Lian* v *Swee Eng Heng & Anor* [1988] 1 MLJ 227 (refd)

Chia Choy Ping (Miss) for the plaintiffs.
Hee Theng Fong for the defendants.

Cur Adv Vult

Karthigesu JC: The plaintiffs ('the vendors') are the joint owners of the freehold land comprised in the government resurvey lot 233-2 of mukim 25 which has an area of approximately 3,723 sq ft on which there is a dwelling house known as No 7 Lorong 10, Geylang, Singapore ('the property'). The defendants are Buddhist monks ('the purchasers').

By an agreement in writing dated 10 October 1989 ('the said agreement') the vendors agreed to sell the property to the purchasers at the price of $409,530 subject to the terms and conditions contained in the said agreement.

The sale was subject to the Singapore Law Society's Conditions of Sale 1981 and the date for completion was fixed as being 14 weeks from the date of the said agreement, that is to say, 15 January 1990. The said agreement also required that 10% of the purchase price in the sum of $40,953 be paid to the vendors' solicitors as a deposit immediately on the signing of the said agreement which the vendors' solicitors were to hold as stakeholders pending completion.

The said agreement further provided that upon completion the purchasers were to pay the vendors' charges, referred to in the said agreement as 'the chargees', all outstanding sums due as well as interest from the date of the said agreement to the date of completion together with all necessary expenses, fees and costs in respect of the discharge of the charges as determined by the chargees, in full discharge of the charges existing against the property in favour of the chargees. In exchange thereof the chargees were to obtain an order of court discharging the charges in favour of the chargees and registered in Vol 2340 No 44, Vol 2344 No 67 and Vol 2361 No 173 and also execute such documents that are necessary to procure the discharge of the said charges (cl 2 of the said agreement). The chargees are not parties to the said agreement.

The clause in the said agreement which gives rise to these proceedings is cl 9 and it reads as follows:

> The sale herein shall be subject to the Purchaser's solicitors receiving satisfactory replies to their legal requisitions to the various Government Departments so far as such replies relate to the said Property and if any of such replies are found to be unsatisfactory in that the said Property is adversely affected by the Mass Rapid Transit System any road or drainage proposal or Government acquisition or scheme or intended Government acquisition or scheme then the purchaser shall be at liberty to rescind this Agreement by giving the Vendor written notice in that behalf within fourteen (14) days from the receipt of all such replies and upon such notice being given, this Agreement shall be null and void in which event the Vendor shall forthwith refund to the Purchaser all moneys paid by him but without any interest compensation or deductions whatsoever and thereupon neither party shall then have any claim or demand against the other for costs damages compensation or otherwise. Provided always that:
>
> (i) no replies to legal requisitions shall be deemed to be unsatisfactory unless the Vendor refuses or is not able to comply with same by the date fixed for completion;
> (ii) any replies to legal requisition or plan indicating that the said Property will be affected by road or drainage proposal or Government acquisition or scheme arising from a redevelopment of the said Property shall not be deemed to be unsatisfactory; and
> (iii) if the Purchaser fails to exercise his right of rescission within the aforesaid stipulated period of fourteen (14) days then the Purchaser shall be deemed to have waived such right; and ...

It is not in dispute that the property is residential property and that it is zoned in the master plan as 'residential'. There is also no dispute as to the other material facts save for the purpose the purchasers are said to have purchased the property.

The vendors in their affidavit filed on 12 April 1990 stated:

> Sometime towards the end of 1988, we were approached by the defendants (the purchasers), who were monks, to sell the said property to them as they informed us that they had intention of constructing a temple on the said property.

Based on this simple assertion the vendors' counsel has argued, and it is her basis for the construction and application of cl 9 of the said agreement, that the purpose of the purchase was for redevelopment either immediately or in the immediate future and not for its existing use as a dwelling house or other permitted use of the existing dwelling house.

The purchasers by the first defendant's affidavit filed on 23 May 1990 disputed this and contended that their intention was always to make use of the building as a meeting place and that they had no immediate plans or indeed any future plans to construct a building for the said meeting place. The present building they contended was sufficient for their existing needs. They further contended that even if they had any intention to construct a building for the said meeting place some time in the future they were constrained by their limited financial resources and by the fact that the property was zoned 'residential'. In the

event they were unable to get a change of use to use the property as a meeting place then they would consider leasing out the property or reselling it or using it for a purpose which did not contravene the law.

The second defendant also filed an affidavit on 14 June 1990 in which he stated that of the three defendants, only he had met the vendors which he did in the presence of the broker in 1988. At that time he did not tell the vendors that the purpose of wanting to purchase the property was to build a temple. The 1988 negotiations did not lead to any sale as he and his co-purchasers were advised against it in view of the charges registered against the property. Even if he and his co-purchasers had contemplated building a temple on the property in 1988 it would not be reasonable to assume that he and his co-purchasers had that same intention when they concluded the agreement to purchase the property on 10 October 1989.

Unsatisfactory though it is to make a finding of fact based on affidavit evidence, I am not satisfied that on a balance of probabilities the vendors have established that the purpose of the purchase of the property was to rebuild on the site a temple or meeting place or even to convert the building into a temple or meeting place by modifications or alterations to the existing building. Since it is the vendors who seek to rely on cl 9(ii) the burden of proof is on the vendors.

Clauses similar to cl 9 have been considered by the courts in what is now already a long line of cases starting with *Tatlien*'s case[1] to *Tay Theng Khoon & Anor* v *Lee Kim Tah (Pte) Ltd.*[2]

The common thread that runs through these cases is as stated by Chan Sek Keong JC (as he then was) in *Chu Yik Man* v *S Rajagopal & Co & Anor*[3] at p 559. He said:

> In my view, the common thread that runs through these three decisions [he was referring to *Tatlien*'s case[1], *Teo Hong Choo*'s case[2] and *Peh Kwee Yong*'s case[3] (at first instance)] was the intention of the parties as expressed in the formula 'satisfactory reply to requisitions'. In my view, that formula is intended to give the purchaser substantially what he has bargained for, taking into account his purpose in purchasing the property and such other circumstances which have a direct or indirect effect on the fulfilments of that purpose.

That statement is as true today as it was then.

Clause 9 of the agreement in this case is a simply worded clause which gives no difficulty in construction. The sale is 'subject to the purchaser's solicitors receiving satisfactory replies to their legal requisitions ...'. It then proceeds '... and if any such replies are found to be unsatisfactory in that the said property is adversely affected by ... any road or drainage proposal ... then the purchaser shall be at liberty to rescind this agreement ...'. Then there are three provisos, the second of which provides, inter alia, that a road proposal arising from a redevelopment of the property shall not be deemed to be unsatisfactory.

The intention of the parties is clear and free from any doubt. The test to be applied is an objective test as to whether the property is adversely affected by a road proposal in which case the purchaser is at liberty to rescind the agreement by a written notice within 14 days of the receipt of the replies to all the requisitions sent out but in any event a road proposal which will only be implemented on the property being redeveloped is not to be considered unsatisfactory, that is to say, adversely affecting the property and thus giving the purchasers the right to rescind the agreement.

Whether or not the road proposal adversely affects the property in the context of cl 9 of the said agreement is a question of fact.

It is not in dispute that the road proposal affecting the property would only be implemented either on the development/redevelopment of the property or a road construction/improvement being carried out whichever is the earlier. It is also not in dispute that the area of the property affected by the road proposal as estimated by the purchasers is about 852.51 sq ft (79.2 sq m) which is about 22.89% of the total area of the property. Prorating this to the purchase price the dollar value of the area affected is about $93,776.10. In actual fact the area affected is slightly more. It is 81.1 sq m or 23.45% of the total area of the property. A further fact which is not in dispute is that the Public Works Department have currently no programme to widen Lorong 10 Geylang and the service road. Lastly it is not disputed that the road proposal if and when implemented would affect a portion of the building at the rear. The property is an inside lot of a row of terraced buildings.

Based on the above undisputed facts the purchasers' solicitors addressed the vendors' solicitors on 2 December 1989 as follows:

> We write to inform you that the road interpretation plan dated 21 November 1989 shows that the property is affected by a road reserve. This road reserve is not dependent upon any redevelopment of the property.
>
> Furthermore, it would also appear from the road interpretation plan that the building itself is affected.
>
> Consequently, pursuant to cl 9 of the sale and purchase agreement, our clients are entitled to rescind. However, on a without prejudice basis, we are presently taking our clients' instructions on this matter.

The purchasers' solicitors wrote again to the vendors' solicitors on 5 December 1989 as follows:

> We write to inform you that in view of the unsatisfactory road interpretation plan, our clients have decided to exercise their right to rescind the sale and purchase agreement pursuant to cl 9.

Consequently, please arrange for the sum of $40,953 to be refunded to us immediately.

There then followed an exchange of correspondence, each side canvassing its arguments, following which the vendors commenced these proceedings under s 4 of the Conveyancing and Law of Property Act (Cap 61, 1985 Ed) in which they claimed the following reliefs:

(a) A declaration that the purchasers have not effectively rescinded the said agreement (notwithstanding the wording of this prayer).
(b) A declaration that the vendors are entitled to forfeit the deposit of $40,953.
(c) A declaration that the vendors have forfeited the deposit of $40,953 and the vendors are at liberty to proceed to another sale of the property either by public (auction) or private contract.
(d) In the event the property is sold for less than the sum of $409,530 a declaration that the purchasers pay the vendors the difference, if any, together with the expenses of such sale.
(e) In the event the purchasers fail to make the payments (if any) due under (d) above a declaration that the vendors are entitled to recover the same as liquidated damages.
(f) Damages against the purchasers for breach of the said agreement including interest payable on the existing charge of the vendors from 16 January 1990 and continuing at $6.01 per day.
(g) Costs.
(h) Such further or other relief.

I have already held that the vendors have not discharged the burden of proof which rests on them to show that the purpose of the purchase of the property by the purchasers was for redevelopment. Accordingly the vendors cannot pray in aid the second proviso to cl 9.

It only remains to consider whether the alternative arguments of the vendors can succeed.

First, the vendors' counsel argued that simply to show that land had been 'safeguarded' by the Public Works Department for future road widening was not sufficient to show that the property was adversely affected. There must be a present intention of the Public Works Department to engage in road widening activities and the land must be 'required' by the Public Works Department for that purpose and only then could it be said that the property was adversely affected. This was not the case here the vendors' counsel argued. She placed reliance on *Ng Khong Lim* v *Nancy Teo*.[4] In my view this reliance is misplaced. The clause under consideration in *Ng Khong Lim*'s case[4] bears no resemblance to cl 9 and serves no purpose to construe cl 9.

Secondly, she argued that the word 'proposal' used in cl 9 must be construed to mean 'programmes plans or schemes affecting the property in its use or enjoyment, present or future'. Since the Public Works Department had said that there was no current programme to widen Lorong 10 Geylang and the service road, there was no 'proposal' affecting the property. This argument which follows on the first is in my view specious. The proposal is the widening of Lorong 10 Geylang and the fact that there is no current programme does not make the proposal any less a proposal. The existing state of affairs is that there is a proposal and whenever implemented would affect the property by depriving it of 23.4% of its land area and also a portion of the building. This in my view as a question of fact adversely affects the property, albeit when Lorong 10 Geylang is widened.

With all due respect to counsel I think she has misread the judgements in *Chu Yik Man*'s case[3] and *Tay Theng Khoon & Anor* v *Lee Kim Tah (Pte) Ltd.*[2]

Thirdly, the vendors' counsel submitted that it would be unfair and a burden to the vendors generally were the purchasers permitted to rescind the sale and purchase agreements in these circumstances as almost all landed properties in Singapore are in one way or another affected by road proposals. Be that as it may there is freedom of contract under our law unless questions of public policy are involved and are not rendered illegal by some provision of law. The existence of such road proposals affecting properties were certainly within the contemplation of the vendors and the purchasers in this case and they sought to specifically provide for it by including cl 9 in their contract. The courts' duty is to interpret it and to give effect to the parties' intention which is to be gathered therefrom.

This same argument was run in *Lim Kim Lian* v *Swee Eng Heng & Anor*.[5] It was rejected in that case and I too would reject it.

No argument was addressed to me that the purchasers failed to exercise their right of rescission within the stipulated period of 14 days in the said agreement.

In the result the plaintiffs (vendors) fail in respect of all the declarations they have sought in these proceedings. Accordingly, I hold that the defendants (purchasers) have effectively rescinded the sale and purchase agreement dated 10 October 1989 for the sale by the plaintiffs of No 7 Lorong 10, Geylang, Singapore to the defendants and that the plaintiffs are not entitled to forfeit the deposit of $40,953.

I order that the costs of these proceedings be taxed and paid by the plaintiffs to the defendants.

Claim dismissed.

Solicitors: *Leong Chia & Lee; Hee Theng Fong & Co.*

Reported by *Terence Tan Bian Chye*